

ROYAL COURT
(Matrimonial Causes Division)

7th April, 1994

71.

Before: The Deputy Bailiff, and
Jurats Vint and Le Ruez

<u>Between:</u>	G	<u>Petitioner</u>
<u>And:</u>	B	<u>Respondent</u>
<u>And:</u>	F	<u>Co-Respondent</u>

Application by the Petitioner for care and control of the two minor children of the marriage,
which at present vests with the Respondent.

Advocate P.C. Harris for the Petitioner.
Advocate S.E. Fitz for the Respondent and Co-Respondent.

JUDGMENT

THE DEPUTY BAILIFF: This is a summons issued by the Petitioner in this cause, G seeking care and control of the two children of the marriage, namely D born in July 1986, and E born in November 1990.

The Court pronounced a decree nisi on 21st July, 1993, on the ground that the Respondent had, since the celebration of the marriage, committed adultery with F the Co-Respondent. The parties separated on 1st September, 1992, when the Respondent left the matrimonial home and went to live in the Women's Refuge. During the succeeding two months or so the children were cared for by the Petitioner.

In November, 1992, however, the Petitioner vacated the matrimonial home and the Respondent moved back and resumed the care of the children. Since that time they have remained with their mother, the father exercising access on a fairly regular basis until July, 1993. Since that time the Petitioner has not

exercised access apart from two occasions at weekends in or about February, 1994.

The factual position is therefore that the Respondent has exercised care and control of these two little girls for most of their lives and certainly since November, 1992.

The Court heard evidence from two Child Care Officers, Mrs. Elizabeth Ward and Mr. David Castledine. Their evidence was, in summary, that the children were well cared for and happy and enjoyed a normal loving relationship with their mother. The elder child, D now aged 7, does not apparently wish to see her father, but that may well be the result of the friction generated between the parents whenever access is actually exercised.

According to the Respondent the younger daughter, E is always pleased to see her father.

It is clear to the Court that the Petitioner feels very strong emotions, both about the breakup of his marriage for which he blames the Co-Respondent and about his children. Those strong emotions have led him to become obsessive about his relationship with his former wife and her relationship with the Co-Respondent.

The Court has more than a little sympathy for the Petitioner. He is a straightforward hardworking man of good character who has found it difficult to come to terms with the collapse of his marriage.

It is common ground, however, that in determining this application the Court's fundamental concern is with the interests of the children. The Court has no doubt, subject to a qualification to which we shall come in a moment, that it would not be in the interests of these children to uproot them from the family home and from the care of their mother of whose parenting no real criticism is made.

The qualification relates to the Petitioner's relationship with the Co-Respondent who has, within the past three weeks, moved into the home to cohabit with the Respondent.

The Co-Respondent gave evidence before us and was extremely candid about his background. He told us that in 1984 he had been investigated for alleged child abuse, when he was carrying his young son, then aged between 18 months and 2 years, up the stairs, he slipped and (as he put it) the child's elbow touched the wall and the arm was broken. It appears that no criminal proceedings actually resulted from this incident, although it seems to have precipitated the breakdown of the Co-Respondent's marriage.

In 1990 and subsequently in 1991 the Co-Respondent was convicted of indecent assaults on young women and for the latter

offences was placed on probation for two years. In addition, he has convictions for malicious damage and for making nuisance telephone calls.

When the Children's Office first became involved in the affairs of this family on or about September, 1992, the Child Care Officer in question reached the conclusion that it was not in the interests of the children that they should live in the same household as F . The Child Care Officer was told that the relationship between the mother and F had ended. If it did, the relationship resumed in November, 1992. As has been stated the relationship has developed and the Respondent and Co-Respondent are now living together in the same house.

The Court has heard evidence from the Child Care Officers that they do not regard the presence of the Co-Respondent in the home as constituting a risk to the children. Mr. Castledine added that there was a sufficient umbrella of support in the continuing involvement of the Children's Office and in the interest displayed by teachers at the school attended by D . The Court accepts those assurances but desires to say that it hopes that the family will be given close support by the Children's Office and that frequent visits will take place, certainly for the time being.

The Court, therefore, reaches the conclusion that it is in the best interests of the children that care and control should be vested in their mother, the Respondent. The Court notes the willingness of the Respondent to agree reasonable access by the Petitioner and hopes that some means can be found whereby the Petitioner can restore his relationship with his elder daughter and play a part in the lives of both his children as they grow up.

The Court therefore dismisses the application and orders that custody of the two children should vest jointly in the Petitioner and the Respondent and that care and control should be vested in the Respondent.

The Court makes no order for costs and the only remaining thing which the Court wishes to do is to express its gratitude to counsel for their assistance in this difficult case.

No authorities.

